

A-570-504
Sunset Review
Public Document
IA/OPS/HES/4340

December 10, 2004

MEMORANDUM TO: James J. Jochum
Assistant Secretary, Import Administration

FROM: Ronald K. Lorentzen
Acting Director, Office of Policy

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset Review of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China; Final Results

Summary

We have analyzed the substantive response of the interested parties in the second sunset review of the antidumping duty order covering petroleum wax candles ("candles") from the People's Republic of China ("PRC"). We recommend that you approve the positions we developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margin likely to prevail

History of the Order

On July 10, 1986, the Department of Commerce ("Department") published its final affirmative determination of sales at less than fair value ("LTFV") in the *Federal Register* with respect to imports of natural paint brushes from the PRC. *See Petroleum Wax Candles from the People's Republic of China; Final Determination of Sales at Less Than Fair Value*, 51 FR 25085 (July 10, 1986). On August 28, 1986, the Department published in the *Federal Register* an antidumping duty order on candles from the PRC. *See Antidumping Duty Order; Petroleum Wax Candles from the People's Republic of China*, 51 FR 30686 (August 28, 1986). Since the issuance

of the antidumping duty order, the Department has conducted several administrative reviews with respect to imports of candles from the PRC; two of those reviews have been conducted since the previous sunset review.¹ The Department has issued over 100 scope rulings that can be found on our website at <http://www.ia.ita.doc.gov/download/candles-prc.scope/>.

The Department published its notice of initiation of the first sunset review on January 4, 1999, pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). See *Initiation of Five-Year Reviews*, 64 FR 364 (January 4, 1999). As a result of that review, the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. See *Final Results of Expedited Sunset Review: Petroleum Wax Candles from the People’s Republic of China*, 64 FR 32481 (June 17, 1999). On September 8, 1999, the International Trade Commission (“ITC”) determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on petroleum wax candles from the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the U.S. within a reasonably foreseeable time. See *Petroleum Wax Candles from the People’s Republic of China*, 64 FR 4851 (September 8, 1999) and USITC Pub. 3226, Inv. No. 731-TA-282 (Review) (August 1999). On September 23, 1999, the Department published the notice of continuation of the antidumping order. See *Continuation of Antidumping Order: Petroleum Wax Candles from the People’s Republic of China*, 64 FR 51514 (September 23, 1999).

Background:

On August 2, 2004, the Department published the notice of initiation of the second sunset review of the antidumping duty order on candles from the PRC pursuant to section 751(c) of the Act. See *Initiation of Five-Year (“Sunset”) Reviews*, 69 FR 46134 (August 2, 2004). The Department received the Notice of Intent to Participate from the National Candles Association (“NCA”) and its participating member companies which comprise the domestic interested parties: AcScents Aromatics Fine Candles, Inc.; Alene Candles, Inc.; Arizona Natural Resources, Inc.; Armadilla Wax Works, Inc.; Aromatique, Inc.; Best Candle, LLC; Blyth HomeScents Intl.; BMC Manufacturing, LLC; Bright Glow Candle Corp.; Bright of America; Bullfrog Light Co.; Candle Lamp Co.; Candle-Lite, Inc.; Carolina CandleLites, Inc.; Casey Pottery Co.; Cathedral Candle Co.; Changing Paradigms, LLC; Covered Bridge Candle Co.; Dadant & Sons, Inc.; Dial Corp.; Dianne’s Custom Candles; Dreamers Candles; Early American Candle; Empire Candle Manufacturing, LLC; Evan Scent, Inc.; General Wax & Candle Co.; GlobalTech Industries, Inc.; Gold Canyon Candles, LLC; Guildhouse – An American Greetings Corp.; Hanna’s Candle Co.; Heartland Fragrance & Herb Co.; Heritage Candles, Inc.;

¹*Petroleum Wax Candles from the People’s Republic of China; Final Results of Antidumping Petroleum Wax Candles from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review*, 66 FR 14545 (March 13, 2001); *Petroleum Wax Candles from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review*, 68 FR 13264 (March 19, 2003); *Amended Notice of Final Results of Antidumping Duty Administrative Review; Petroleum Wax Candles from the People’s Republic of China*, 69 FR 20858 (April 19, 2004).

Hillhouse Natural Farms, Ltd.; Home Essentials, LLC; Home Fragrance Holdings, Inc.; Hot Wax Candle Co., Inc.; Lamplight Farms; Laredo Candle Co.; Latitudes Intl.; Lumi-Lite Candle Co., Inc.; Miracle Candle Co.; Natures Finest Candles; Old Virginia Candle Co.; Old Williamsburgh Candle Corp.; Olio, Inc.; Panacea Products Corp.; Park Avenue Candles; Primal Elements, Inc.; Private Gardens – Trapp Candles; Reed Candle Co.; Root Candles; Salt City Candle Co.; Starlume, Inc.; Surgipath Medical Industries, Inc. dba Cera Bella; Suzzette’s Cabin Candles; Tyler Candle Co.; USA Labs, Inc.; Votivo, Ltd.; Williamsburg Soap and Candle Co.; Wizard Candles, Inc.; and Yankee Candle Co, Inc. (collectively “the domestic interested parties”), within the deadline specified in section 351.218(d)(1)(i) of the Department’s Regulations (“Sunset Regulations”). The domestic interested parties claimed interested party status under section 771(9)(E) of the Act, as a trade association, the majority of members manufacture, produce, or wholesale a domestic-like product in the United States. We received a complete substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no responses from the respondent interested parties. As a result, pursuant to section 751(c)(5)(A) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of this order.

Discussion of the Issues:

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Below we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

The domestic interested parties believe that revocation of this antidumping duty order would likely lead to a continuation or recurrence of dumping by the Chinese producers of the subject merchandise due to continued dumping. *See* Substantive Response of the Domestic Interested Parties (“Substantive Response”) (August 31, 2004) at 12. The domestic interested parties contend that 147 requests for scope rulings have led the Department to rule 102 times. *Id.* at 13. The domestic interested parties argue that the extraordinary number of scope rulings represents a wide-spread effort on the part of the Chinese exporters and U.S. importers to evade the effect of the order. *Id.* In addition, the domestic interested parties contend that when the Department excludes a particular type of candle, imports of the excluded candles increase. *Id.* at 15. The domestic interested parties conclude that the increasing volume of Chinese candles with respect to the excluded candles demonstrates that revocation will

certainly lead to a continuation of dumping. *Id.* at 18.

Also, the domestic interested parties point out that since the antidumping duty order was imposed in 1986, imports of candles declined dramatically until the mid-1990s, then rose substantially. *Id.* at 13. The domestic interested parties argue that because all candles, whether or not subject to this order, enter the United States under the same tariff codes, accurate statistical information pertaining to the subject merchandise is not available. *Id.*

Department's Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (“URAA”), specifically the Statement of Administrative Action (“SAA”), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994) (“House Report”), and the Senate Report, S. Rep. No. 103-412 (1994) (“Senate Report”), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis. *See Sunset Policy Bulletin at section II.A.2.* In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. *See Sunset Policy Bulletin at section II.A.3.*

Consistent with the *Sunset Policy Bulletin*, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where, *inter alia*, dumping continued at any level above *de minimis* after the issuance of the order. The Department has conducted a number of reviews since issuance of the order in which it found that dumping continued at levels above *de minimis* for the PRC exporter. *See* Footnote 1 of this Memorandum. For example, four respondents were found to have been dumping at a rate of 108.30 percent in the last completed review. *See* 69 FR 20858 (April 19, 2004).

In addition, pursuant to 752(c)(1)(B) of the Act, the Department considered the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping order. Using statistics provided by the ITC Dataweb (see attached), the Department finds that imports surpassed pre-order levels and levels since the first sunset review. Since 1999, the year of completion of our first sunset review, imports have increased from 68.9 million kilograms to 83.3 million kilograms of Chinese candles. *See* attached import statistics. The Department notes that the domestic interested parties argue that an indeterminable amount of excluded merchandise is attributed to the import volumes. Given that dumping has continued at increased import volumes at levels above *de minimis*, the Department determines that dumping is likely to continue or recur if the order were revoked.

2. Magnitude of the Margin Likely to Prevail:

Interested Party Comments

In its substantive response, the domestic interested parties request that the Department determine

that the dumping margin for all Chinese exporters is likely to prevail at the rate found in the most recently completed administrative review of 108.30 percent if this order were revoked. *See* Substantive Response at 13. The domestic interested parties argue that circumstances for reporting a more recent and higher margin, as described in the *Sunset Policy Bulletin*, warrant the Department to report to the ITC a more recently calculated margin for a particular company where, for that company, dumping margins increased, even if the increase was a result of the application of best information or facts available. *See Sunset Policy Bulletin* II.B.2. In this instance, the domestic interested parties state that 97 Chinese exporters or producers failed to cooperate with the Department in the last administrative review that resulted in a margin of 108.30 percent. *See* Substantive Response at 13. Therefore, the domestic interested parties request that the Department find that this recent behavior is more representative of the likely behavior of the Chinese manufacturers and exporters of candles if the order were revoked and report to the ITC the more recent and higher margin of 108.30 percent for the Chinese exporters that had obtained a separate rate and for the PRC entity.

Department's Position

Normally the Department will provide to the ITC the company-specific margin from the investigation for each company, and for companies not investigated specifically or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the “all others” rate from the investigation. However, this case involves a non-market economy. In this case, although the Department does not have an “all others” rate, there is a “PRC-wide rate” which applies to all imports from exporters who have not established their eligibility for a separate rate. The Department’s preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place. Under certain circumstances, however, the Department may select a more recently calculated margin, to report to the ITC.

In the first sunset review, the Department reported to the ITC a margin from the original investigation. *See Final Results of Expedited Sunset Review: Petroleum Wax Candles from the People’s Republic of China*, 64 FR 32481 (June 17, 1999). However, the Department may, in response to an argument from an interested party, provide to the ITC a more recently calculated margin where, for example, dumping margins increased, even if the increase was a result of the application of best information or facts available. For these final results of expedited sunset review, the Department has determined to report to the ITC the margin from the most recently completed administrative review for all Chinese manufacturers and exporters. In the original investigation, the Department established a PRC-wide deposit rate of 54.21 percent. *See* 51 FR 25085. However, in a more recently completed administrative review, the Department determined to apply a rate of 108.30 percent to the PRC-wide entity. *See* 69 FR 20858. Therefore, we find that it is appropriate to provide the ITC with a more recently calculated PRC-wide rate because dumping margins have increased at the same time import volumes have increased since the last sunset review. Thus, we will report to the ITC a margin of 108.30 percent for all exporters and producers of candles.

Final Results of Review

We determine that revocation of the antidumping duty order on candles from the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margin:

----- Manufacturers/Exporters/Producers	Weighted-Average Margin (percent) -----
PRC-wide	108.30
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Recommendation

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the *Federal Register*.

AGREE X

DISAGREE _____

ORIGINAL SIGNED

James J. Jochum
Assistant Secretary
for Import Administration

12/10/04

(Date)